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16 IN RE: FACEBOOK, INC. CONSUMER  
17 PRIVACY USER PROFILE LITIGATION,

18 This document relates to:

19 ALL ACTIONS

20 CASE NO. 3:18-MD-02843-VC

21 **FACEBOOK, INC.'S RENEWED  
22 ADMINISTRATIVE MOTION TO  
23 PERMANENTLY SEAL**

1 Pursuant to Civil Local Rules 7-11 and 79-5, as well as the Court’s September 8, 2021 Order  
 2 Re: Administrative Motions to Seal, Dkt. 737, Facebook, Inc. (“Facebook”) hereby submits this Re-  
 3 newed Administrative Motion to Permanently Seal.

4 On February 16, 2021, Facebook moved to permanently seal descriptions of documents gen-  
 5 erated by Facebook’s App Developer Investigation (“ADI” or the “Investigation”) submitted for *in*  
 6 *camera* review and the names of Facebook employees and third-party experts from Facebook’s privi-  
 7 lege logs. Dkt. 623. The Court granted the motion in part and instructed Facebook to propose more  
 8 tailored redactions over the descriptions of documents. Dkt. 737 at 1–2.

9 Facebook respectfully moves to seal permanently three narrow categories of information  
 10 within the parties’ briefs: (i) details of the methods and structure of the Investigation that could pose  
 11 security risks if revealed; (ii) details of the Investigation’s innovative and proprietary design, struc-  
 12 ture, techniques, and strategies that could cause Facebook competitive harm; and (iii) details of em-  
 13 ployee roles within the Investigation that may compromise individuals’ privacy interests or reveal  
 14 confidential operational and personnel information. For the reasons explained below, there is good  
 15 cause to seal permanently this information, and Facebook’s request is narrowly tailored.

16 **I. Background**

17 On February 5, 2021, the parties submitted simultaneous briefs regarding Plaintiffs’ motion to  
 18 compel investigatory materials generated during the Investigation. Dkts. 611, 612. Due to the timing  
 19 of the filing, the parties agreed to file their submissions temporarily under seal and that Facebook  
 20 would later submit a permanent sealing request. Dkt. 610. Facebook then moved to permanently seal  
 21 “(i) descriptions of privileged, confidential documents submitted for *in camera* review that were gen-  
 22 erated during the ADI Investigation; and (ii) the names of Facebook employees and third-party ex-  
 23 perts drawn directly from privilege logs that Facebook designated as ‘Confidential’ under the protec-  
 24 tive order.” Dkt. 623 at 2. The Court granted Facebook’s request to seal the names of employees and  
 25 third-party experts.<sup>1</sup> Dkt. 737 at 1. The Court denied without prejudice Facebook’s request to seal

26  
 27 <sup>1</sup> Because the Court granted Facebook’s request to seal “the names of Facebook employees and  
 28 third-party experts drawn directly from the privilege logs that Facebook designated as ‘Confidential’  
 under the protective order,” Dkt. 737 at 1, Facebook includes these redactions with its proposed re-  
 dactions, but omits any legal argument concerning these redactions.

1 the document descriptions and instructed Facebook to propose more tailored redactions. Dkt. 737  
 2 at 1–2.

3 **II. The Good Cause Standard Applies Because The Motion Is Unrelated To The Merits**

4 When a party seeks to seal judicial records related to the merits of a case, there is a “strong  
 5 presumption in favor of” public access to the records. *Kamakana v. City & Cnty. of Honolulu*, 447  
 6 F.3d 1172, 1178 (9th Cir. 2006). But this high standard does not apply where, as here, the infor-  
 7 mation a party seeks to seal is “unrelated or only tangentially related to the merits of a case.” *Doe v.*  
 8 *Walmart, Inc.*, 2019 WL 636362 at \* 1 (N.D. Cal. Feb. 11, 2019); *see also Kamakana*, 447 F.3d at  
 9 1179 (“[T]he public has less of a need for access to court records attached only to non-dispositive  
 10 motions because those documents are often unrelated, or only tangentially related, to the underlying  
 11 cause of action.). Instead, courts seal information in non-dispositive motions so long as there is good  
 12 cause to do so because public disclosure of the information would cause harm or prejudice, and the  
 13 request is narrowly tailored. *Walmart*, at \*1–\*2. Here, the parties’ briefs relate to a privilege dispute,  
 14 not the merits of this action, so the good cause standard applies. For the reasons explained below,  
 15 there is good cause to permanently seal Facebook’s limited proposed redactions.

16 **III. There Is Good Cause To Seal Facebook’s Three Categories Of Confidential Information**

17 Facebook asks the Court to seal permanently (i) details of the methods and structure of the In-  
 18 vestigation that could pose security risks if revealed; (ii) details of the Investigation’s innovative and  
 19 proprietary design, structure, techniques, and strategies that could cause Facebook competitive harm;  
 20 and (iii) details of employee roles within the Investigation that may reveal the identities of the indi-  
 21 viduals or reveal Facebook’s confidential operational and personnel information. These limited re-  
 22 dactions appear within pages 11 to 20 of Facebook’s brief and pages 8 and 9 of Plaintiffs’ brief.<sup>2</sup>

23 ***Details of the methods and structure of the Investigation that could pose security risks.***

24 There is good cause to seal limited portions of document descriptions revealing the methods and  
 25 structure of the Investigation, such as how the Investigation prioritized the risks of apps and the iden-  
 26 tities of email accounts related to the Investigation and how they were used. *E.g.*, Facebook’s Br. at  
 27

28 <sup>2</sup> Plaintiffs’ descriptions of these documents come directly from privilege logs Facebook design-  
 29 nated as “Confidential” under the Protective Order. Southwell Decl. ¶ 6; *see* Dkt. 122.

1 16:3, 16:5–9, 16:11–13, 16:19–20, 17:5–8, 19:19–21, 20:9–14. Public access to this information  
 2 could pose security risks. The Investigation was designed in anticipation of litigation and regulatory  
 3 scrutiny, to identify applications that may have misused data before additional platform protections  
 4 were implemented. Southwell Decl. ¶¶ 7, 8. Publicly revealing confidential aspects of the Investigation  
 5 – design, structure, and activities could provide bad actors with information they could weapon-  
 6 ize to evade the additional technological, investigative, and enforcement mechanisms that Facebook  
 7 has enacted to detect and disrupt abuse. *Id.* ¶ 15. If this sensitive information were publicly dis-  
 8 closed, it could make Facebook’s enforcement efforts less effective, causing harm to Facebook and  
 9 its billions of users. *Id.*

10 ***Details of the Investigation’s innovative and proprietary design, structure, techniques, and***  
***11 strategies that could cause competitive harm.*** There is also good cause to seal information about the  
 12 Investigation’s innovative and proprietary design, structure, techniques, and strategies developed by  
 13 counsel in anticipation of litigation, such as limited portions of document descriptions regarding pro-  
 14 prietary methods for risk-prioritization of apps or describing specific investigation and enforcement  
 15 activities by consultants that reveal the Investigation’s techniques and strategies. *E.g.*, Facebook’s  
 16 Br. at 12:17, 13:8–11, 13:24–25, 15:6–15, 15:17, 15:23–25, 16:5–13, 16:26–27, 17:5–8, 18:3–15,  
 17 19:7–11, 19:19–28, 20:1–21; Pls.’ Br. at 8–9. There is no industry standard for conducting an investi-  
 18 gation into millions of applications to assess Facebook’s legal risk in anticipation of litigation, so the  
 19 ADI team devised and tailored proprietary methods and techniques to address the specific legal risks  
 20 to Facebook. Southwell Decl. ¶¶ 10, 14. Publicly disclosing this proprietary information would al-  
 21 low Facebook’s competitors to copy these proprietary methods and techniques and cause Facebook  
 22 competitive harm. *Id.* ¶ 14; *see, e.g.*, *In re Liboderm Antitrust Litig.*, 2016 WL 4191612, at \* 26  
 23 (Aug. 9, 2015 N.D. Cal.) (granting a motion to seal a privilege log based on an affidavit that stated  
 24 the log’s descriptions “reflect[ed] and convey[ed] confidential, proprietary information about Endo’s  
 25 business operations as well as its strategies”). Courts routinely seal proprietary information that  
 26 “competitors would be able to take advantage of” and use unfairly if disclosed. *Asetek Danmark A/S*  
 27 v. *CMI USA, Inc.*, 2015 WL 4511036 at \*2 (N.D. Cal. July 23, 2015); *see In re Elec. Arts, Inc.*, 298 F.  
 28 App’x 568, 569 (9th Cir. 2008) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978))

1 (granting writ of mandamus and sealing document that could be used “as [a] source[] of business in-  
 2 formation that might harm a litigant’s competitive standing”).

3 ***Details of employee roles within the Investigation that may compromise privacy interests or***  
 4 ***reveal operational and personnel information.*** Finally, there is good cause to seal limited portions  
 5 of document descriptions that reveal the job titles and roles of Facebook employees and experts  
 6 working on the Investigation. *E.g.*, Facebook Br. at 11:22–27, 12:6–9, 12:19–20, 13:8–9, 13:12–13,  
 7 15:1, 15:23, 17:27–28, 18:3–5, 18:13–14, 19:7–11, 19:23–24, 20:1–4, 20:13, 20:20–21. If revealed,  
 8 these job titles and roles could be used to identify the specific employees or experts to which they re-  
 9 fer and compromise the privacy and safety interests of individuals who are not parties to the litiga-  
 10 tion. Southwell Decl. ¶ 16; *see, e.g.*, *Murphy v. Kavo America Corp.*, 2012 WL 1497489, at \* 1  
 11 (N.D. Cal. April 27, 2012) (recognizing that “[e]mployees and former employees who are not parties  
 12 to [] litigation have privacy interests in their personnel information”). Sealing is also especially  
 13 needed here because publicly revealing the titles and roles of Facebook employees or experts who  
 14 worked on the Investigation will reveal Facebook’s confidential operational and personnel infor-  
 15 mation, and may encourage competitors to recruit these critical employees. Southwell Decl., ¶ 16;  
 16 *see In re Incretin-Based Therapies Prods. Liabs. Litig.*, 2015 WL 11658712 at \*2 (S.D. Cal. Nov. 18,  
 17 2015) (“[C]ourts have maintained documents under seal where the information contained therein  
 18 could permit competitors to gain access to operational and personnel information.”).

19 Because of the harm that would occur from public disclosure of these three categories of in-  
 20 formation, limited portions of the document descriptions in the parties’ briefs are highly sensitive and  
 21 should be sealed permanently.

#### 22 **IV. The Limited Proposed Redactions Are Narrowly Tailored**

23 Facebook’s proposed redactions of the three categories of confidential information within the  
 24 parties’ briefs are narrowly tailored. With respect to Plaintiffs’ brief, Facebook proposes redacting  
 25 only three direct quotes from Facebook’s privilege log that reveal information about the structure and  
 26 methods of the Investigation. *See* Pls.’ Br. at 8–9; Southwell Decl. ¶ 6. These redactions comprise  
 27 less than six lines of Plaintiffs’ 19-page brief. With respect to Facebook’s brief, Facebook only seeks  
 28 to redact limited portions of the descriptions of the documents reviewed *in camera*, which reveal

1 confidential information within the three categories discussed above. *See Dunbar v. Google, Inc.*,  
2 2013 WL 12216625, at \*1 (N.D. Cal. Aug. 18, 2014) (granting sealing requests that were “narrowly  
3 tailored to protect [a company’s] proprietary information”). The public is able to access the majority  
4 of Facebook’s document descriptions and privilege arguments, including summations of Plaintiffs’  
5 privilege challenges, *e.g.*, Facebook’s Br. at 11:14–17; detailed descriptions of documents that do not  
6 include confidential information, *e.g.*, *id.* at 16:20–25; Facebook’s substantive legal arguments in  
7 favor of privilege for each document, *e.g.*, *id.* at 13:26–14:7; and other factual indicia of privilege for  
8 certain communications, *e.g.*, *id.* at 13:25–26 (“[The document] is labeled ‘Privileged & Confidential  
9 – Attorney Work Product – Attorney-Client Communication’”).

10 \* \* \*

11 For these reasons, Facebook respectfully requests that the Court grant this renewed  
12 administrative motion to permanently seal.

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